UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.414
11 May 2000

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE 414th MEETING

Held at the Palais des Nations, Geneva,
On Wednesday, 3 May 2000, at 10 a.m.

Chairman: Mr. BURNS

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GE.00-41827 (EXT)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Portugal (CAT/C/44/Add.7; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, Mr. Mendonça E Moura, Mr. Santos Pais, Ms. de Albuquerque, Mr. Marrecas Ferreira, Mrs. de Matos, Mr. Gomes Dias and Mrs. Graça Carvalho (Portugal) took places at the Committee table.

2. Mr. MENDONCA E MOURA (Portugal) commended the members of the Committee for their efforts and assured them that, as would be apparent from his country's third periodic report (CAT/C/44/Add.7) and the additional information which his delegation was about to provide, Portugal shared their objectives and struggle. Both before the Committee and in the other relevant United Nations bodies and international organizations, Portugal had always taken a willing and active part in combating torture.

3. The report before the Committee was, he felt, free and complete, for it had been drawn up by an entity independent of the Government, the Office of Documentation and Comparative Law, a subsidiary organ of the Office of the Attorney-General, which was itself distinct from the Executive. Furthermore, his delegation comprised two Deputy Attorneys -General, a prosecutor from the Inspectorate-General of Internal Administration, an official from the Directorate-General of Prison Services and two members of the Office of Documentation and Comparative Law. That testified to the importance that his country's Government attached to the Committee's work.

4. Mr. SANTOS PAIS (Portugal) said that his country's third periodic report covered a period ending on 28 February 1998, since when there had been a number of changes in Portuguese law and practice. In making those reforms, the Portuguese authorities had drawn directly on recommendations made by the Committee and other international monitoring bodies such as the European Committee for the Prevention of Torture.

5. The first change concerned Macao. The Committee had expressed a desire that the Convention should be applied to Macao while the territory was still under Portuguese administration, as it had been until 20 December 1999. Following lengthy negotiations with the Chinese authorities, Portugal had obtained agreement to the continued application to Macao of the Convention and of some 100 other international agreements, including some dozen concerning human rights. Hence, when its administration of the territory had ended, Portugal had left in place a panoply of national and international human rights regulations of which it would be hard to find an equal elsewhere in the Asia-Pacific region.

6. Regarding the Convention, the activities of the police remained among the principal concerns both of the Committee and of the Portuguese authorities, and the latter had radically restructured the Public Security Police. Law No. 5/99, promulgated in January 1999 in place of Decree-law No. 321/94, had introduced new rules concerning the organization and running of that force. One effect of the recent revision of the Constitution had been that the new rules had been approved by the Assembly of the Republic and not, as previously, by the Government alone. The new law had three main aims: to emphasise the civil nature of the police, whose basic tasks were to defend democratic legality and safeguard internal security and citizens' rights and freedoms; to incorporate in the police regulations principles such as legality and the prohibition of excesses in policing; to improve the structure of the Public Security Police nationwide so as to strengthen management and make the

police less remote from the population that they were charged with defending. A number of projects in pursuit of the latter aim had already been initiated; they concerned security in schools, the safety of the elderly and support for victims. Lastly, the status of members of the Public Security Police had been regulated by Decree-law No. 511/99.

7. When it had considered Portugal's previous report (CAT/C/25/Add.10), the Committee had expressed concern about the possible gap between the law and its application and had recommended that the Portuguese authorities should pay more attention to, and formally investigate complaints of violence made against police officers and impose appropriate penalties where necessary. Portugal had made great efforts in those regards and he wished to supplement the information concerning them given in the report. In the case of the Public Security Police and the National Republican Guard, there were special inspectorates to institute disciplinary proceedings when necessary. The Inspectorate-General referred to in paragraph 49 of the report could also open disciplinary proceedings; as it was headed by a Deputy Attorney-General, it enjoyed full technical and functional independence from the Ministry of the Interior. The Inspectorate-General carried out not only regular visits, but also surprise inspections, and was therefore well able to supervise conditions in police stations, especially conditions of custody there. A total of 700 premises had received such visits in the past three years and 117 of them had been closed because operating conditions and conditions of detention had been inadequate. When the Inspectorate-General found there had been an abuse of authority, the Attorney-General's Office was obliged to open criminal proceedings The Judicial Police came in organizational terms under the Ministry of Justice and in functional terms under the Attorney-General's Office, which was responsible for coordinating its activities in criminal cases. Judicial Police units were inspected at least every three years by officials from the Attorney-General's Office acting on the authority of the Attorney-General; the Attorney-General could also order special inspections whenever he felt that necessary. The prison services, which came under the Ministry of Justice, had their own inspection department divided into three teams so as to cover the entire country. Each team was coordinated by a prosecutor. The Ministry of Justice was preparing a revised version of the law governing its own operation that would enable it to establish an inspectorate-general with responsibility for monitoring the activities of a range of bodies coming under the Ministry, including the Directorate-General of Prison Services.

8. To enable it to track criminal cases against civil officers, the Office of the Attorney-General had, in 1993, established a database showing the status of all such proceedings: since procurators were responsible for informing it of all cases brought against civil officers, the Office was able to keep a running total of such cases and see how it varied with time. The Office had recently began to notify the Directorate-General of Prison Services and the Inspectorate-General of Internal Administration of all cases brought against their officials so that they could take the necessary disciplinary measures. It would soon have a central investigation and criminal prosecution department with special responsibility for ensuring coordination between the criminal police and the prosecution services in the judicial district concerned regarding the investigation of crimes against peace and humanity, including the crime of torture. That was all evidence of Portugal's resolve to take judicial action regarding all allegations of acts falling under the Convention against Torture; disciplinary or judicial proceedings or both were opened for every offence potentially coming under the Convention.

9. A recent decree-law had imposed uniform rules on the use of firearms by police corps. Pursuant to the principles of overriding need and proportionality, the use of firearms was only permitted in exceptional circumstances and when no better alternative was available. A distinction was made between the use of such weapons against objects and against persons. In the second instance, the weapons could only be used to protect human life and in the three situations mentioned in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials: against an imminent threat; to prevent the perpetration of a particularly serious crime involving grave threat to life; to arrest a person presenting such a danger and resisting officials, or to prevent the person's escape. The use of firearms was further subject to the provision of warnings and assistance and to the submission of a report to the Attorney-General's Office. If the use occasioned death or serious injury, the Inspectorate-General of Internal Administration had to be informed and to open an immediate inquiry.

10. The Committee had expressed concern in the past about conditions of detention in police custody. A recent ministerial order regulated the material conditions of confinement in any police detention facility of any person deprived of liberty for less than 48 hours, including persons held for the purposes of identification. The order contained specific provisions concerning cells (size, location, building materials, lighting, sanitary facilities, hygiene and comfort) and required the gradual renovation of existing cells. In all, 140 unsuitable detention facilities had already been closed. The new regulations also specified the procedures for detention and instituted various safeguards: detention registers, fact sheets on detainees stating the time of, and reason for detention, the identities of the detainee and the arresting officer, and other relevant information such as what contacts there had been with third parties. Detainees had the right to telephone relatives and their lawyers and were entitled to privacy when talking to the latter. They could also asked to be examined by a doctor and, if injured, must be taken to hospital. All detention facilities were subject to surprise inspections by the Inspectorate-General of Internal Administration. That body and the Attorney-General's Office must be informed without delay of all cases of the death or violent, inhuman or degrading treatment of detainees.

11. The Committee had also expressed concern about conditions in penal institutions. The Office of the Ombudsman had carried out two inspections of penal institutions, in 1996 and 1999. The first had led to the submission to the Minister of Justice of nearly 200 recommendations and the second to a finding by the Ombudsman that progress had been made. The European Committee for the Prevention of Torture had visited Portugal four times, in 1992, 1995, 1996 and April 1999; it, too, had found evidence of significant change, particularly at Porto. Thanks to the implementation of the 1996 Programme of Action for the Prison System, the rate of prison overcrowding had fallen from 57% in 1986 to 14% at the present day. The principal reasons for that were the opening of new establishments, the renovation of existing prisons, and the declaration in 1999 of an amnesty. Physical conditions in prisons had also grown better, with the installation of toilets in cells and improvements to exercise rooms, kitchens, interview rooms and other shared facilities. Health services had not been overlooked in the improvements: creation of drug-free units in five prisons; adoption by the Council of Ministers of a national drug abuse control strategy giving high priority to prisons; building of new health units; establishment of methadone-distribution, vaccination and other health-related programmes for prisoners; promulgation of law No. 170/99 against the spread of infectious and contagious diseases in prisons; improvement of prison life through wider provision of education, vocational training and cultural and sporting activities and the possibility for inmates of open prisons to train and work outside the institution; increased attention to the preservation of family ties, with the creation in 1999 of private meeting rooms in two long-stay prisons. The penal services were subject to vetting by several outside bodies, including: the sentence enforcement board, which made monthly visits to each prison for the confidential hearing of inmates' complaints; the Ombudsman; the European Committee for the Prevention of Torture, and the European Court of Human Rights.

12. Regarding training, Law No 5/99 on the organization and operation of the Public Security Police had established a new organizational framework for police training schools comprising, for officers, the Higher Institute of Police Science and Internal Security and, for lower ranks, the Police Practical School. In addition, the Council of Ministers had established an advisory board on training

for security forces and services; it was responsible for studying, coordinating and planning police training courses and campaigns and included among its members eminent representatives of civil society and academia. The in-service training programme devised in collaboration with the Open University and begun in 1997 was continuing. It was aimed at all members of the Public Security Police and the National Republican Guard and covered all matters of concern to them: fundamental rights, professional ethics, study of social groups, neighbourhood policing, etc.. It also provided for the training of a large number of trainers, for whom 21 courses had so far been held. Eight video films and accompanying manuals had been produced, covering such varied fields as fundamental rights, professional ethics, protection of individuals and victim support, immigrants, minorities, and drug addiction. The video films had been distributed throughout the country and shown to more than 45,000 police officers. A written evaluation test was held after each module. Further video films were in preparation.

13. The Portuguese National Commission for the United Nations Decade for Human Rights Education had undertaken to disseminate within Portugal information about the Convention and the Committee's work. The Commission's website was hosted on the site of the Office of Documentation and Comparative Law, which contained a section dealing with international protection of human rights that included explanations of the Convention's main provisions, including the provisions on the submission of communications by individuals, and of the Committee's work. The site also gave access to the texts of the three periodic reports that Portugal had submitted to the Committee, the summary records of the meetings at which the Committee had considered those reports and the Committee's conclusions and recommendations to Portugal. The Office of Documentation and Comparative Law published a quarterly comparative-law newsletter which was distributed free to all judges and to which numerous lawyers and legal scholars had taken out subscriptions. The texts of Portugal's third periodic report under the Convention and of the Committee's summary records and conclusions and recommendations concerning the first two such reports had all been printed in that newsletter at the beginning of 1999. Another issue of the newsletter had contained an article on the Convention and on the Committee's procedures and competence.

14. The National Commission would be translating into Portuguese the series of United Nations "Fact Sheets", including a leaflet about the Committee, and the publications in the United Nations Professional Training Series, No. 5 of which was entitled "Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police". The Commission would publish those texts and distribute them to the occupational groups directly concerned, as well as to schools, universities and other teaching establishments, public libraries and so on.

15. The regulations concerning aliens' entry to, presence in, and exit and expulsion from Portugal had been changed. The changes were aimed principally at giving effect to all Portugal's international undertakings; they also took into account decisions of the European Court of Human Rights regarding expulsion procedures in particular. The main features of the new regulations were: differential rules for the granting of visas, so as to ensure greater fairness, justice and transparency; clear rules regarding family reunification; exemptions, especially in humanitarian cases, from the normal rules on residence permits; assistance for immigrants returning to their countries of origin; penalties for people who furthered illegal immigration or employed illegal migrants.

16. There had been significant changes in other areas too, including the extensive amendment of the framework law on cooperation in criminal cases that had been undertaken in 1999 and the alterations made in 1998 to the mental health law. Much had been done since 1989, thanks in particular to the Committee's advice and recommendations, but progress was principally dependent on time, patience and experience. Protecting human rights was an arduous and never-ending task.

The Committee could be assured that his delegation would report regularly to it on its successes and failures in that long struggle.

17. The CHAIRMAN, speaking as the rapporteur for Portugal, thanked the representative of Portugal for his very detailed statement, which had answered several of the questions he himself had intended to put. Portugal had accepted the Committee's competence under articles 20 and 22 of the Convention and was a contributor of several years' standing to the United Nations Voluntary Fund for Victims of Torture; its Government's latest measures to give effect to the Convention were excellent. The third periodic report, due in 1998, had been received in June 1999. It covered the period from 31 March 1996 to 28 February 1998 and showed that there had been numerous significant changes since the consideration of the previous report.

18. There remained a number of points of concern. Firstly, while Portugal had strengthened the law regarding the structure and operation of the police, the latter's activities and behaviour still constituted a thorny problem, as the representative of Portugal had himself admitted.

19. With respect to article 1 of the Convention, Portugal had included in its Criminal Code a definition of torture and cruel, inhuman or degrading treatment. That definition was, however, narrower than the one in the Convention, inasmuch as offenders could sometimes be subject to a disciplinary, administrative penalty, rather than to criminal prosecution. The setting-up of the Inspectorate-General of Internal Administration referred to in paragraph 49 of the third periodic report represented a considerable step forward. What explained the decline mentioned in paragraph 51 of that report in the number of people complaining of violence by the police?

20. In addition to the concerns raised by information in the report, he drew the Portuguese delegation's attention to allegations made by Amnesty International in its report "Portugal: 'Small problems'...? A Summary of Concerns" regarding in particular deaths in, or after police custody, ill-treatment of arrestees by police officers and illegal detention by police officers. In that regard, it was especially important that police officers should fill out custody registers properly He would like to know whether the allegations made by Amnesty International were correct and whether they had given rise to prosecutions and to action by the authorities to prevent recurrences of incidents of the types in question. It was also alleged in the Amnesty International report that, because of the slowness of judicial proceedings, persons guilty of torture or ill-treatment in effect acted with impunity, suffering little or no penalty or simply being disciplined. Was that in fact true?

21. Concerning the situation in penal establishments, the information provided orally suggested that the Portuguese Government had taken steps to prevent torture and ill-treatment, thereby resolving a further concern expressed by Amnesty International.

22. As the Committee had remarked in its conclusions and recommendations concerning Portugal's second periodic report, it would be desirable for the Government to state its position concerning the extent of its criminal jurisdiction when acts of torture were committed outside its territory. It was not clear from the third periodic report what that position was. The Convention not only permitted, but also required States to exercise universal jurisdiction with respect to acts of torture.

23. It was gratifying that Portugal had succeeded in obtaining the application to Macao of the Convention against Torture and that China had agreed to uphold the Convention as the successor State. The measures taken to regulate the use of firearms by the various police forces and the conformity of the relevant regulations with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were sources of great satisfaction.

24. Mr. YU Mengjia (Co-rapporteur) thanked the Portuguese delegation for the quality of its introduction and congratulated the Portuguese Government on having supplemented and improved its legislation. It seemed, however, that more effort was required to ensure better application of article 11 of the Convention and to reduce the duration of judicial proceedings, which, according to certain sources, could be excessive. A further worrying, and apparently persistent problem was that of violence between prisoners. Was the Portuguese Government doing anything to remedy it?

25. The two statistical tables in paragraph 202 of the report were of great interest with respect to the application of article 12 of the Convention. The existing legislation seemed altogether adequate for the application of article 13; it would be interesting to know whether it could be easily and rapidly implemented. With reference to article 14, there seemed to be relatively few applications for compensation; could the Portuguese delegation say why that was? In view of the reports that some prison warders and officials engaged in drug trafficking with prisoners, he wondered what the Government was doing to prevent and end the presence of illicit drugs in prisons.

26. Mr. CAMARA said that he too was satisfied both with the written report and with the oral information. Having been rapporteur for Portugal during the consideration of the second periodic report, he was not surprised by the quality of the measures taken by the Portuguese authorities. The Committee's role was, however, to increase its knowledge of situations and it was, therefore, demanding in its inquiries.

27. Regarding the reference in paragraph 135 of the report to detention for the purposes of identification, he observed that French law on identity checks (vérification d' identité) entitled the police to request people to show their identity papers even when no offence had been committed. That practice, which was common to a number of countries, was not without its problems. In Portugal, the law provided that anyone who could not or would not present an identity document was taken to the nearest police post for a maximum of two hours in order to be identified. What happened if the person still refused to reveal their identity when the two hours were up? It was often on such occasions that violence occurred in police stations. States could not be expected to forgo identity checks, but measures to prevent abuses were essential.

28. Given the figures concerning complaints against police officers in paragraph 202 of the report, he had a number of questions regarding the application of articles 12 and 13 of the Convention. In particular, for what types of offence was an investigation or trial "pending" and why were proceedings so often only at the "pending" stage? As the Convention required that a prompt and impartial investigation be made whenever torture was alleged, he feared that the extreme slowness of proceedings might result in impunity or an impression of impunity. Disciplinary proceedings for torture or ill-treatment could be instituted in parallel with criminal proceedings; had that ever been done?

29. Mrs. GAER said that the figures given in paragraph 202 of the report concerning article 12 of the Convention were impressive. She would like to know whether the very marked decline in complaints against police officers for the commission of criminal offences while on duty was attributable to the visits of the European Committee for the Prevention of Torture, the Committee against Torture's interest in Portugal, special efforts by the Portuguese Government or a lack of information. She also wondered how many people had been amnestied or had their sentence reduced after conviction.

30. That the Convention would remain applicable after the return of Macao to China was gratifying, but she would also welcome information about implementation of the Convention in

Macao during the period of Portuguese administration, a subject on which she had seen nothing in the report. According to paragraph 5 of the core document (HRI/CORE/1/Add.20) Portugal was still the Administering Power for East Timor, but had been unable to function as such since December 1975 because of Indonesia's illegal occupation of the territory. In view in particular of the reports that the occupying forces had committed rape and torture, she would like to know how the situation that had obtained since August 1999 had affected Portugal's obligations under the Convention. Had the Portuguese authorities tried to verify those reports and what did they intend to do about the situation?

31. With respect to ill-treatment in prisons, she wondered whether complaints of sexual abuse were handled in the same way as other complaints and what steps had been taken to prevent sexual violence. The news about training programmes for the police was very encouraging; she would like to know whether the programmes gave any particular attention, for example in the video films that the delegation had mentioned, to violence against women. As some cases had given rise to formal inquiries, she would also like to know whether police officers had been sanctioned.

32. A member of the Committee had already expressed concern about the problem of "gang leaders" among detainees. Did the authorities do anything to maintain control in places of detention and to ensure the prison population's safety?

33. Paragraphs 34 (h) and 91 of the third periodic report referred to the removal of organs from dead or living persons. According to article 10 of Law No. 12/93, "all national citizens or stateless persons or aliens residing in Portugal who have not expressly informed the Ministry of Health that they do not wish to be donors" were considered as "potential post-mortem donors". She would therefore like more information on the safeguards established with regard to organ removal and on the measures taken to ensure that citizens' consent was properly informed.

34. Mr. RASMUSSEN congratulated the Portuguese Government on the quality of its third periodic report. Paragraphs 81 to 87 of that document dealt with the role of doctors, but failed to say anything about the essential part they could play in preventing torture. While it was gratifying that persons in custody could call on the services of a doctor of their choice, it was also very important that such persons should be examined by a doctor upon their arrival at the place of detention. He would like to know whether there were special instructions for prison doctors, whether there were special forms for them to fill out if they found evidence of bruising or other lesions and whether, in the event of such a discovery, they merely described their findings or also reported any allegations of ill-treatment or torture and gave their conclusions concerning them. What action was taken on prison doctors' reports?

35. The CHAIRMAN invited the delegation to respond at the beginning of the Committee's next meeting to the questions which had been put to it.

36. The delegation of Portugal withdrew.

The meeting was suspended at 11:25 a.m. and resumed at 11:45 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

37. The CHAIRMAN announced that Amnesty International had requested permission to make video recordings of the public meetings at which the Committee would consider the reports of China and United States of America. The Committee had, at one of its earliest sessions, discussed the recording of meetings and decided that there was no reason in principle not to allow the recording of public meetings, providing the recording activity was unobtrusive. The representatives of Amnesty

International had undertaken to be unobtrusive. The Committee could, therefore, keep to its earlier decision, unless members objected.

38. Mr. MAVROMMATIS said that he approved the principle, but feared the Committee might be accused of permitting recording for particular countries. That being so, the Chairman should state the Committee's position of principle at the beginning of meetings and make it clear that the consideration of any country's report could be recorded.

39. The CHAIRMAN approved that suggestion.

Appointment of reporters and co-rapporteurs for country reports to be considered at the twenty-fifth session in November 2000

40. The CHAIRMAN suggested that Mrs. Gaer and Mr. Burns should be the rapporteurs for the third periodic report of Belarus, Mr. Mavrommatis and Mr. Rasmussen the rapporteurs for the second periodic report of Australia, Mrs. Gaer and Mr. El Masry the rapporteurs for the third periodic report of Canada, Mr. Yakovlev and Mr. Mavrommatis the rapporteurs for the second periodic report of Georgia, Mr. Camara and Mr. Henriques Gaspar the rapporteurs for the second periodic report of Cameroon, and Mr. González Poblete and Mr. Rasmussen the rapporteurs for the third periodic report of Guatemala.

41. Regarding the Committee on the Rights of the Child's note for information on State violence against children (document without a symbol), he suggested that in its reply the Committee against Torture should formally undertake to support the proposed discussion, express its concern about and systematic opposition to State violence against children and offer its support in principle for all action on the matter by the Committee on the Rights of the Child.

42. Following a brief exchange of views in which Mr. EL MASRY, Mr. BRUNI, Mr. MAVROMMATIS, Mr. GONZALEZ POBLETE and Mrs. GAER took part concerning the distribution of documents, the CHAIRMAN remarked that all documentation for a session was sent to the members of the Committee before the session. For reasons of cost and time, summary records concerning specific countries were only distributed in advance to the rapporteurs and co-rapporteurs concerned. A full set of summary records could be kept in the meeting room for consultation.

The meeting rose at 12:15 p.m.